

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL J. BARNES, JR.,

Plaintiff-Appellant,

v

KIM KRISTINE JEDEVINE,

Defendant-Appellee.

UNPUBLISHED

August 23, 2005

No. 252840

Kalamazoo Circuit Court

LC No. 03-006657-DP

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the order of the circuit court dismissing his paternity claim against defendant on the ground that he lacked standing. We reverse and remand for reinstatement of plaintiff's claim. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and her husband separated, and defendant began a relationship with plaintiff. Defendant's husband filed for divorce, and maintained that there were no children born of the marriage, and that none was expected. A default judgment was entered, reflecting defendant's position: "it further appearing that no children were born of this marriage and none are expected"

The judgment of divorce was entered on November 2, 1998. Nearly four months afterward, defendant gave birth to a son, who shares his surname with plaintiff. Defendant had made no mention of a pregnancy to her husband or to the trial court (she took no part in the proceedings below) while the divorce was pending. An affidavit of parentage, signed by the state registrar, attests that both parties in this action acknowledged plaintiff's paternity of the child by their signatures on February 27, 1999, according to "parentage facts on file in the Michigan Department of Community Health"

The parties discontinued their relationship, and plaintiff asserted parental rights. The trial court held that plaintiff lacked standing to assert parentage of a child presumably conceived during defendant's marriage to another man. The court recited caselaw establishing the strong presumption that the husband is the father, and concluded that the default divorce judgment terminating defendant's marriage did not actually determine the question of defendant's husband's paternity for purposes of allowing plaintiff to proceed with a paternity action.

We review a trial court's decision on a motion for summary disposition de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Whether a party has standing to bring an action likewise presents a question of law, that we review de novo. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004).

The Paternity Act¹ confers standing on the father of a child born out of wedlock to sue to establish paternity. *McHone v Sosnowski*, 239 Mich App 674, 677; 609 NW2d 844 (2000); MCL 722.714(1) and (8). The act defines a child born "out of wedlock" as one "begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a). Under the second clause, standing to assert parentage requires an earlier judicial determination that the child is not an issue of the marriage. *McHone*, *supra* at 677-678.

At issue is whether the language in the default divorce judgment about there "further appearing that no children were born of this marriage and none are expected" constitutes a judicial determination that defendant's ex-husband is not the father of the child conceived during the marriage. We conclude that it does. The language of the judgment indicates that no children were born of the marriage, and that none were expected to be born.

"A default judgment is just as conclusive an adjudication and as binding upon the parties of whatever is essential to support the judgment as one which has been rendered following answer and contest." *Perry & Derrick Co v King*, 24 Mich App 616, 620; 180 NW2d 483 (1970). See also *Schwartz v City of Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991). Respecting defaults, in their factual as well as legal components, is a function of the policy of respecting the finality of judicial judgments. See, e.g., *Nederlander v Nederlander*, 205 Mich App 123, 126; 517 NW2d 768 (1994). If the trial court's equivocation about there merely "appearing" to be no children of the marriage did indeed reflect the court's lack of opportunity to consider the factual matter fully, it nonetheless reflected no lack of legal authority behind the substance implicit in that unchallenged ruling.

Where a husband seeking a divorce decree expresses no knowledge whether a pregnancy is in progress, and the ensuing default judgment is then silent on the question of paternity, the issue of paternity is not determined for purposes of creating standing to assert paternity in a later action. *Dep't of Social Services v Baayoun*, 204 Mich App 170, 176; 514 NW2d 522 (1994). The instant case, however, is distinguishable from *Baayoun*, in that here the divorce judgment does indeed address the question of paternity, effectively reciting that the husband was not responsible for any children. "The rule is well established that courts speak through their judgments and decrees" *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977).

¹ MCL 722.711 *et seq.*

In this case, the legal presumption that a child is factually the offspring of the mother's husband was answered, and repudiated by the language within the default judgment.² Plaintiff therefore had standing to bring this paternity action. *McHone, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray

² *In re CAW*, 469 Mich 192; 665 NW2d 475 (2003) does not apply to this case. That case did not involve or contain any discussion about standing under the paternity act. Instead, it involved standing to intervene in a termination case. A subsequent case, not cited by either party, *In re KH, supra* does address standing under the paternity act, but in that case the plaintiff did not have a prior determination that the child was not born of the marriage. *In re KH, supra* at 632. Because of the standing definition under the paternity act, the default judgment determination grants plaintiff standing.